

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BEN & JERRY'S HOMEMADE, INC.

Plaintiff,

v.

CONOPCO, INC.,

Defendant.

Case No. 1:22-cv-05681 (ALC)

**DECLARATION OF DAVID KUMAGAI IN SUPPORT OF DEFENDANT
CONOPCO, INC.'S OPPOSITION TO PLAINTIFF'S APPLICATION FOR
PRELIMINARY INJUNCTIVE RELIEF**

Dated: July 11, 2022

I, DAVID KUMAGAI, hereby declare:

1. I am an associate at the law firm of Cravath, Swaine & Moore LLP, counsel for Defendant Conopco, Inc. (“Conopco”) in the above-captioned litigation. I submit this declaration in support of Conopco’s Opposition to Plaintiff’s Application for Preliminary Injunctive Relief.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Agreement and Plan of Merger entered into between Conopco, Vermont All Natural Expansion Company and Ben & Jerry’s Homemade, Inc. (“Ben & Jerry’s”), dated April 11, 2000, as amended and restated on July 5, 2000.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Ben & Jerry’s bylaws, adopted August 3, 2000.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Shareholders Agreement entered into between Conopco and Ben & Jerry’s, dated August 3, 2000.

5. Attached hereto as **Exhibit D** is a true and correct copy of the Trademark Sale Agreement entered into between Ben & Jerry’s and Unilever N.V., dated December 22, 2000.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Supplemental Agreement to the Trademark Sale Agreement entered into between Ben & Jerry’s and Unilever N.V., dated December 29, 2000.

7. Attached hereto as **Exhibit F** is a true and correct copy of the Deed of Assignment entered into between Ben & Jerry’s and Unilever N.V., dated May 16, 2001.

8. Attached hereto as **Exhibit G** is a true and correct copy of Declaration of Avi Zinger in Support of Plaintiffs' Motion for Preliminary Injunctive Relief filed in *Zinger et al. v. Ben & Jerry's Homemade, Inc. et al.*, No. 2:22-cv-01154-KM-JBC (D.N.J.), Dkt. 4-2, dated March 11, 2022.

9. Attached hereto as **Exhibit H** is a true and correct copy of the License Agreement between Ben & Jerry's and American Quality Products Ltd. ("AQP"), dated January 8, 2004, including the amendments thereto, dated April 4, 2013 and October 1, 2020.

10. Attached hereto as **Exhibit I** is a true and correct copy of the July 19, 2021 statement from Ben & Jerry's titled "Ben & Jerry's Will End Sales of Our Ice Cream in the Occupied Palestinian Territory", available at <https://www.benjerry.com/about-us/media-center/opt-statement>.

11. Attached hereto as **Exhibit J** is a true and correct copy of the July 19, 2021 statement from Unilever titled "Unilever Statement on Ben & Jerry's Decision", available at <https://www.unilever.com/news/press-and-media/press-releases/2021/unilever-statement-on-ben-and-jerrys-decision/>.

12. Attached hereto as **Exhibit K** is a true and correct copy of a July 19, 2021 article published by NBC News titled "Ben & Jerry's Withdraws Sales from Israeli Settlements But Clashes with Parent Company Unilever", available at <https://www.nbcnews.com/business/business-news/ben-jerry-s-withdraws-sales-israeli-settlements-clashes-parent-company-n1274403>.

13. Attached hereto as **Exhibit L** is a true and correct copy of the September 7, 2021 press release from the Arizona State Treasurer titled "Arizona Treasurer Kimberly Yee

Divests State Funds from Ben & Jerry's for Boycotting Israel", available at
https://www.aztreasury.gov/_files/ugd/8bb536_e2cf32637a64f96bbaf8b5a9c2a4ecd.pdf.

14. Attached hereto as **Exhibit M** is a true and correct copy of the September 14, 2021 press release from the New Jersey Department of the Treasury titled "Treasury Statement on Pension Fund Investments in Ben & Jerry's Parent Company Unilever", available at <https://www.state.nj.us/treasury/news/2021/09152021.shtml>.

15. Attached hereto as **Exhibit N** is a true and correct copy of the August 3, 2021 press release from the Florida Governor's Office titled "Florida Places Ben & Jerry's Parent Company Unilever on Its List of Scrutinized Companies that Boycott Israel", available at <https://www.flgov.com/2021/08/03/florida-places-ben-jerrys-parent-company-unilever-on-its-list-of-scrutinized-companies-that-boycott-israel/>.

16. Attached hereto as **Exhibit O** is a true and correct copy of the September 23, 2021 press release from the Texas Comptroller titled "Texas Comptroller Glenn Hegar: Ben & Jerry's and its Parent Company Added to Texas List of Companies That Boycott Israel", available at <https://comptroller.texas.gov/about/media-center/news/20210923-texas-comptroller-glenn-hegar-ben-and-jerrys-and-its-parent-company-added-to-texas-list-of-companies-that-boycott-israel-1632327961380>.

17. Attached hereto as **Exhibit P** is a true and correct copy of an October 28, 2021 article published by Reuters titled "New York Pension Fund Joins Exit from Unilever Over Israel Restrictions", available at <https://www.reuters.com/business/new-york-pension-fund-divest-104-mln-stake-unilever-2021-10-29/>.

18. Attached hereto as **Exhibit Q** is a true and correct copy of a December 23, 2021 article published by the Times of Israel titled "Illinois Divests Pension Funds from

Unilever Over Ben & Jerry's Settlement Boycott", available at
<https://www.timesofisrael.com/illinois-divests-pension-funds-from-unilever-over-ben-jerrys-settlement-boycott/>.

19. Attached hereto as **Exhibit R** is a true and correct copy of a March 18, 2022 press release from the Colorado Public Employees' Retirement Association titled "Colorado PERA votes to assess Unilever investment over Ben and Jerry's statement", available at https://www.copera.org/files/8ab44fe1e/PressRelease_Unilever+Ben+and+Jerrys_3.18.22.pdf.

20. Attached hereto as **Exhibit S** is a true and correct copy of the Bill of Sale entered into between Unilever IP Holdings B.V. and Blue & White Ice-Cream Ltd., dated June 29, 2022; and appended thereto as Exhibit I is a true and correct copy of the Trademark Assignment Agreement entered into between Unilever IP Holdings B.V. and Blue & White Ice-Cream Ltd., dated June 29, 2022.

21. Attached hereto as **Exhibit T** is a true and correct copy of the July 29, 2021 statement from Unilever titled "Unilever Reaches New Business Arrangement for Ben & Jerry's in Israel", available at <https://www.unilever.com/news/press-and-media/press-releases/2022/unilever-reaches-new-business-arrangement-for-ben-jerrys-in-israel/>.

22. Attached hereto as **Exhibit U** is a true and correct copy of the July 29, 2022 statement from Avi Zinger published by the Brandeis Center, available at <https://brandeiscenter.com/major-victory-against-bds-avi-zingers-legal-team-prevents-ben-ben-jerrys-will-continue-to-be-sold-in-israel-press-release/>.

23. Attached hereto as **Exhibit V** is a true and correct copy of an email sent by Lian Danino Lishka to Amir Shraga, et al. on June 29, 2022, and the accompanying attachment to that email, translated from Hebrew to English.

24. Attached hereto as **Exhibit W** is a true and correct copy of the Business Transfer Agreement entered into between Unilever PLC and Blue & White Ice-Cream Ltd., dated June 27, 2022.

25. Attached hereto as **Exhibit X** is a true and correct copy of a Supplier Letter sent on behalf of Unilever PLC to Blue & White Ice-Cream Ltd., dated June 29, 2022.

26. Attached hereto as **Exhibit Y** is a true and correct copy of the Guarantee Agreement entered into between Unilever PLC and American Quality Products Ltd., dated June 27, 2022.

27. Attached hereto as **Exhibit Z** is a true and correct copy of the Settlement and Release Agreement entered into between American Quality Products Ltd. and Avi Zinger, on the one hand, and Ben & Jerry's Homemade, Inc., Conopco, Inc., Unilever United States, Inc., Unilever IP Holdings B.V. and Unilever PLC, on the other hand, dated June 27, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 11, 2022
New York, New York

s/ David Kumagai
David Kumagai